IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Civil Revision No. 85 /2003

Dharampal Singh … Revisionist.

Vs.

M/S United Traders Nainital Road
Rudrapur District U.S. Nagar through
Its parterns No. 1 Jagjeet Singh and
Vikramjeet Singh ..Respondent.

Hon'ble Irshad Hussain, J.

Heard Sri M.C. Pandey learned counsel for the revisionist and perused the record.

2- There appear to be no necessity to issue notice to the respondent and instead the revision is disposed of finally at the admission stage.

3- It appear that the respondent- plaintiff field a suit beyond period of limitation for recovery of some money with the allegation that he was bonafidely and deligently prosecuting his remedy before Consumer Forum. In a situation such the application could have been considered under section 14 of the Indian Limitation Act, 1963 but as is evident from the impugned order dated 17.5.2003 the learned Civil Judge (Senior Divisin), Udham Singh Nagar treated the same as an application under section 5 of the Indian Limitation Act and without issuing the notice to the defendant-revisionist went on to allow the application by a cryptic order. Since the important right of the defendant-revisionist was involved, the matter of condonation of delay could not have been decided without issuing notice and giving him ample opportunity to oppose the move of the plaintiff- respondent for institution and admission of the regular suit against him. Considering this it is evident that the learned trial court has not exercised jurisdiction vested in him properly in passing the impugned order and therefore impugned order is liable to be set aside.

4- The revision is accordingly allowed and the impugned order dated 17.5.2003 is set aside. The learned Civil Judge (Senior Division), U.S. Nagar is directed to give an opportunity to the defendant-revisionist to file an

objection against the application for condonation of delay in presentation of the original suit and thereafter the matter shall be decided on merit according to law. The defendant-revisionist is directed to file the objection within one month from the date of this order before the trial court.

Dated: 24-12-2003 **(Irshad Hussain, J.)**
ISB